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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,782

03/22/2004

Martin Balzer

LIP036

9929

7590

01/10/2007

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EXAMINER

LEYSON, JOSEPH S

ART UNIT

PAPER NUMBER

1722

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/805,782	Applicant(s) BALZER ET AL.	
	Examiner Joseph Leyson	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2006 and 17 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 8-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. All previous issues, objections and/or rejections are withdrawn in view of Applicant's responses filed on October 25, 2006 and November 17, 2006, if NOT restated below.

Election/Restrictions

2. Claims 8-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse as mentioned in the previous office action.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohta (U.S. Patent 5,460,772).

Ohta (U.S. Patent 5,460,772) teaches an extrusion head (i.e., figs. 2-5) for the production of a tubular multilayer preform of thermoplastic material with at least one strip of material extending in the extrusion direction, including an annular passage arrangement 2 including a plurality of annular passages in mutually concentric relationship and forming mutually separate flow paths for material forming the various layers of the multilayer preform, five feed paths 1b for feeding plastic material from five

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extruders to the annular passage arrangement 2, an annular gap nozzle 4 having an annular gap 4a communicating with the annular passage arrangement 2, and at least one flow passage (i.e., one of the passages 2a) opening into an annular passage of the annular passage arrangement 2 for introducing material forming the strip, and the flow passage opening upstream of the annular gap 4a in the region of separation of the flow paths (i.e., cols. 11-12); note that 2b is a bridge between passages 2a which is shown in fig. 4 but is gone by fig. 5). As disclosed, for example by figs. 2-7 and cols. 11-12, the extrusion head includes a flow divider which divides the flow passages 2a, the flow passage communicating with said annular passage by way of the flow divider (i.e., when the passages 2a merge), wherein the annular passage arrangement 2 includes an outer annular passage (which extrudes B,C and D in fig. 7) and the flow divider is arranged in the outer annular passage operably to effect complete division (i.e., of B and C in fig. 7) in the axial direction of the extrudate flowing through said outer annular passage. The annular passages communicate directly with the annular gap 4a of the annular gap nozzle (i.e., fig. 2). The annular passage arrangement 2 has first, second and third annular passages comprising an inner annular passage and first and second outer passages, wherein the outer annular passages are brought together upstream of the opening of the inner annular passage into the annular gap 4a (i.e., as shown in fig. 2, the two outermost layers merge before the innermost layer opens into the gap 4a). As to the claim recitations relative to softened thermoplastic material and to a viewing strip of translucent material, such recitations are to the intended use of the claimed apparatus. A claim containing a "recitation with respect to the manner in which a

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claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987); see MPEP 2114. "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." In re Young, 75 F.2d 996, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)). See MPEP 2115.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohta (U.S. Patent 5,460,772) in view of Richter (U.S. Patent 6,764,639) and/or applicant's admission (i.e., instant specification at p. 10, lines 21-22).

Ohta (U.S. Patent 5,460,772) discloses the apparatus substantially as claimed as mentioned above, except for an annular storage space operatively interposed between the annular passage arrangement and the annular gap, wherein the annular storage space includes an annular piston in which the annular passage arrangement is provided.

Richter (U.S. Patent 6,764,639) discloses an extrusion head including an annular passage arrangement including a plurality of annular passages 12a, 13a, 14a in mutually concentric relationship and forming mutually separate flow paths for material forming the various layers of the multilayer perform, an annular piston 5 in which the annular passage arrangement is provided, an annular gap nozzle 8 having an annular gap communicating with the annular passage arrangement (fig. 2), an annular storage space 16 operatively interposed between the annular passage arrangement and the annular gap of the annular gap nozzle 8. The annular storage space 16 acts as a reservoir for the layers before they are extruded out by piston 5 (i.e., cols. 2 and 3).

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the extrusion head of Ohta (U.S. Patent 5,460,772) with an annular storage space and an annular piston in which the annular passage

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arrangement is provided because such a modification would provide means for storing or reserving the layers and means for extruding the layers in blow molding apparatus, as disclosed by Richter (U.S. Patent 6,764,639), and/or because such means are well known and conventional in the blow molding art, since applicants admit that such means are "generally known".

Response to Arguments

8. Applicant's arguments with respect to the instant claims have been considered but are moot in view of the new ground(s) of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Leyson whose telephone number is (571) 272-5061. The examiner can normally be reached on M-F 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gupta Yogendra can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JL


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11/3/07